IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 16086 of 2003

Between:

A.V.M. High School, Rajendranagar Rangareddy Dist.
rep by its Correspondent, Mohd.Abdul Waheeb,S/o.Mohd. Shareef
R/o. H.No. 19-2-140/5, Moochi Colony, Tadbun Post, Bhadurpura, Hyderabad.

..... PETITIONER

AND

1 State of A.P. rep by its Principal Secretary to Govt. Education (PS) Department, Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of School Education, Government of A.P. Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction especially in the nature of writ of Mandamus directing the respondents to accept the proposals of the petitioner for admission of posts to grant-in-aid in Telugu and English Medium as per the recommendations made by the Deputy Educational Officer, Vikarabad in his Letter No. 20/A1/Dy.Edu/03 dated 14-02-2003 by declaring the letter of the commissioner and Director of School Education in No. 2886/B4-4/2002 dated 21-6-2003 and Memo NO.11048/PS-2/2003-1 Education (PS) Department, dated 09-07-2003 issued by the Principal Secretary to Government, Education (PS) Department as being arbitrary, illegal, unconstitutional, null and void and accord all consequential and attendant benefits.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following :

ORAL ORDER:

The petitioner submits that earlier he filed W.P. No. 7511 of 2001 seeking a direction to the respondents for sanction of certain grant-in-aid posts to his school as per the eligibility under the A.P. Education Rules and the said writ petition disposed of with a direction to the respondents to take appropriate steps to consider the proposals purported to have been submitted by the petitioner and pass appropriate orders thereon.

The petitioner further submits that as the respondents did not comply with the order of this Court in spite of the proposals sent by the Deputy Educational Officer, Vikarabad vide letter No. 20/A1/Dy.Edv/03 dated 14.2.2003, recommending the case of the petitioner for admission of posts to Grant-in-aid under Telugu and English Media, the petitioner filed a Contempt Case No. 457 of 2003, which was closed in view of the proceedings in Memo No. 11048/PS-2/2003-1 dated 9-7-2003 issued by the first respondent wherein it was observed that since the petitioner school was upgraded after the cut off date of 1-9-1985, it is not entitled to the Grant-in-aid posts and rejected the request of the petitioner for such sanction under the provision of Act. 22/1988. Aggrieved by the same, the petitioner filed the present writ petition.

The learned counsel for the petitioner contended that solely on the ground that the petitioner school was upgraded during the year 1988-89, it cannot be denied the benefit of absorbing the posts into the grant-in-aid and since the school was originally started in the year 1978-79, Act 22 of 1988 will not apply to the petitioner school. The date of upgradation or introducing higher classes cannot be taken as cut of date for the purpose of starting of the school. He further contended that the grounds which are not stated in the impugned proceedings cannot be supplemented by the authorities in the counter and therefore, the impugned order is liable to be set aside. He further contended that by virtue of the decision of the Supreme Court in Chandigarh Administration & Others Vs. Mrs. Rajani Vali and others permission to admit the grant-in-aid cannot be denied and cannot be refused on the ground that the government has frozen prior to granting permission to upgrade the school and hence he prayed to allow

the writ petition.

On the other hand, the learned Government Pleader for School Education contended that as per G.O. Rt. No. 1838/Edn. Education S.S.E. Department, dated 23.12.1988, the upgradation was given subject to the condition that in future no grant-in-aid will be granted and that G.O. has not been challenged by the petitioner and that the affidavit is very silent with regard to the nature of recruitment to the posts and since the persons who are appointed in the said posts came from back door and hence they cannot be given permission for grant-in-aid and prayed to dismiss the writ petition.

It is not in dispute that the petitioner was permitted to start school in the year 1976-77. Thereafter, as per the proceedings dated 23.12.1988, the government accorded permission to upgrade the petitioner's school into high school by opening classes 8, 9 and 10 both in English and Telugu media during the year 1988-89 without grant-in-aid, subject to fulfilling of one of the conditions viz., "Now in future, no grant-in-aid will be granted".

The specific case of the petitioner is that consequent on the opening of classes 8, 9 and 10, the management continued the high school sections from their own funds without aid from the government as per the condition stipulated in the GO Rt No. 1838, Education dated 23.12.1988, but the impugned order does not indicate that because the government upgraded the school on the condition that in future no grand-in-aid will be granted. For that he relied upon a judgment of the Supreme Court in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others wherein it was held that

> *"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."*

Therefore, the ground on which the case of the petitioner was rejected has not been stated so in the affidavit, so also, in the impugned proceedings.

The other contention raised by the learned Government Pleader for School Education is that the staff for whom grant-in-aid is sought were appointed through back door entry and hence their services cannot be legalized since the procedure in filling up those posts whether grant-in-aid or un-aided posts has not been followed by the management of the school. Again this ground has not been specifically mentioned in the impugned proceedings.

The sole ground on which the High Level Committee passed the impugned proceeding is that the new posts in respect of the High school classes, which were opened during 1988-89 are not entitled to grant-in-aid as per the provisions of Act 22 of 1988. But which provision has been violated by the petitioner has not been specifically stated in the impugned order. A reading of the impugned order indicates that as per Section 2(1)(a) of Act 22 of 1988, which reads that "no Private Educational Institutions other than a college establishment after 1st April 1977 and existing on 1st September 1985 shall be entitled to receive any grant-in-aid, unless the Committee constituted in G.O. Rt No. 220, Edn. (SSE.I) Department, dated 24.2.1988 recommends for grant-in-aid. So even as per the above provision, the school was started in the year 1977 and was in existence as on 1st September 1985. Therefore, the rejection of the case of the petitioner on the ground that the school was upgraded in the year 1988 and therefore, the school was not in existence is totally devoid of merit.

At this juncture, the learned counsel for the petitioner relied on the judgment of the Supreme Court in Chandigarh Administration (1 supra), wherein the Supreme Court held that

> *"Grant-in-aid to additional staff appointed in aided school on its upgradation with prior approval, cannot be refused on ground staff position for grant-in-aid purposes stood frozen prior to granting permission to upgrade school and permission was on condition that no grant-in-aid will be given."*

So, in view of the findings of the Supreme Court in the case, referred to supra, it is clear that the date of initial starting of the school has to be taken into consideration but not the upgradation or opening of some higher classes.

Since the school was admittedly stated in the year 1977 and was in existence as on 1st September 1985, the case of the petitioner should have been considered in accordance with the Rules. The High Level Committee has passed the impugned order mechanically and without application of mind and hence it is liable to be set aside.

For the above reasons, the Writ Petition is allowed and the impugned order is set aside. The High Level Committee shall pass necessary orders to admit the posts of the petitioner's school into grant-in-aid after giving reasonable opportunity to the petitioner. No costs.

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kvsn 20-07-2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this 20th day of July, Two Thousand and Five.

REGISTRAR

To

1 The Principal Secretary to Govt. Education (PS) Department, Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of School Education, Government of A.P. Hyderabad.

3 Two CCs to GP for School Education, High Court buildings, Hyderabad.

4 Two CD copies.